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25 APR 2008

FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

In re Application of YOSHINAGA et al  
U.S. Application No.: 10/553,038  
PCT Application No.: PCT/JP2004/018685  
Int. Filing Date: 08 December 2004  
Priority Date Claimed: 08 December 2003  
Attorney Docket No.: 00684.102862  
For: DISPLAY APPARATUS

DECISION

This is in response to applicant's "Petition Under 37 C.F.R. §1.181 or Conditionally Under 37 C.F.R. §1.137(a) and M.P.E.P. §711.03(c) to Withdraw Holding of Abandonment" filed 14 March 2008.

**BACKGROUND**

On 08 December 2004, applicant filed international application PCT/JP2004/018685, which claimed priority of an earlier Japan application filed 08 December 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 16 June 2005. The thirty-month period for paying the basic national fee in the United States expired on 08 June 2006.

On 11 October 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 31 August 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905)<sup>1</sup>, which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 22 January 2008, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated the application is abandoned for failure to timely respond to the Notification of Missing Requirements.

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<sup>1</sup> Copy attached.

On 14 March 2008, applicant filed the present petition under 37 CFR 1.181.

### **DISCUSSION**

The petition states that the Notification of Missing Requirements was never received.

MPEP 711.03(c), Section I. A., "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action" states in relevant part,

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

In the present case, the petition includes a statement from the practitioner describing the docketing system of the practitioner's firm and establishing that the system is sufficiently reliable. Furthermore, the petition includes a statement from the practitioner that the correspondence was not received and that a search of the practitioner's file records revealed that the correspondence was not received. In addition, the petition includes a copy of the master docket record for the practitioner's firm, listing all replies docketed for the due date for reply to the correspondence in question. Such docket record does not indicate that any response to a Notification of Missing Requirements was due on 31 October 2006 for the present application.

### **CONCLUSION**

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 22 January 2008 is hereby VACATED.

A proper response to the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in ABANDONMENT of the application. Extensions of time are available under 37 CFR 1.136(a).

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



Bryan Lin  
PCT Legal Examiner  
PCT Legal Office

Telephone: 571-272-3303

Facsimile: 571-273-0459

ATTACHMENT: Copy of Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905)



UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office  
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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/553,038	Hideki Yoshinaga	00684.102862

5514  
FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

INTERNATIONAL APPLICATION NO.	
PCT/JP04/18685	
I.A. FILING DATE	PRIORITY DATE
12/08/2004	12/08/2003

CONFIRMATION NO. 6783  
371 FORMALITIES LETTER



Date Mailed: 08/31/2006

**NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)**

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated / Elected Office (37 CFR 1.495).

- Copy of the International Application filed on 10/11/2005
- Copy of the International Search Report filed on 10/11/2005
- Copy of IPE Report filed on 11/17/2005
- Information Disclosure Statements filed on 11/17/2005
- U.S. Basic National Fees filed on 10/11/2005
- Priority Documents filed on 10/11/2005

The applicant needs to satisfy supplemental fees problems indicated below.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.
- To avoid abandonment, a surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.492(h) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

**SUMMARY OF FEES DUE:**

Total additional fees required for this application is \$130 for a Large Entity:

- \$130 Surcharge.

ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTHS FROM THE DATE OF THIS NOTICE OR BY 32 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

KAREN M WILLIAMS

Telephone: (703) 308-9140 EXT 213

PART 2 - OFFICE COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
10/553,038	PCT/JP04/18685	00684.102862

FORM PCT/DO/EO/905 (371 Formalities Notice)